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Membership in Taxpayer is open to all persons. A person may become a member of Taxpayer either at a store, over the telephone or over the Internet. All that is

required is completion of a simple membership application and payment of a one-time \$ membership fee.

To be an “active” member of Taxpayer, a member must, during a calendar year, purchase at least \$ worth of merchandise from Taxpayer, or pay a \$ mailing charge. Membership in Taxpayer is a lifetime membership. Inactive members become “active” by meeting the minimum purchase requirement for a year.

As a cooperative, Taxpayer distributes earnings each year from business done with or for members to its members as patronage dividends. Taxpayer’s goal is to pay a patronage dividend to members each year equal to of the member’s eligible Taxpayer purchases. In 2013, Taxpayer paid \$ in patronage dividends to some active members, based upon their 2012 purchases.

Taxpayer’s fiscal year ends December 31. Each year, in January and February, Taxpayer goes through the process of closing its books and preparing its financial statements so that it can determine total net earnings as well as patronage-sourced net earnings available for payment to members as patronage dividends. Patronage dividends are approved by Taxpayer’s Board of Directors and are paid to members based upon eligible purchases made during the fiscal year, net of certain returns.

Historically, Taxpayer has sent to each active member by U.S. mail a written notice of the member’s patronage dividend for the year just ended. Taxpayer’s patronage dividend notices are not accompanied by a payment in money or by a qualified check and are not immediately redeemable for cash, and so the notices are “nonqualified written notices of allocation” as that term is defined in section 1388(d) of the Code. As a result, Taxpayer does not claim an exclusion or deduction for the notices when they are issued. Rather, when the Taxpayer member later redeems the notices for money or for merchandise, Taxpayer claims a deduction in accordance with sections 1382(b)(2) and 1383 for the amount paid.

Taxpayer also has, in recent years, made unused dividend balance information available to members at its website. This information is updated at the time the patronage dividend notices are mailed to members. At the website, members can look up their balances at any time. Currently, the website provides members with a combined balance of their unused patronage dividends and rebates. It does not provide detail of the unused balances of each or identify the year of origin.

A member may use his or her patronage dividend as a cash equivalent to purchase merchandise at any Taxpayer store, online, by telephone or by mail order. When a member applies a patronage dividend to a merchandise purchase, Taxpayer

treats the nonqualified written notice of allocation as having been redeemed for cash or other property within the meaning of section 1382(b)(2) of the Code.

In addition, a member may visit any Taxpayer store and request payment in cash at any time from            through            each year. A member also may request that Taxpayer issue a check. Such requests may be made by telephone, by mail or online. While requests for redemption by check may be made at any time, Taxpayer issues checks only from            through            each year.

Taxpayer places an            on its notices to limit the cost and complications of keeping track of            amounts for            of members. Taxpayer's bylaws provide that a member's patronage dividend allocation            of the year after the member is notified of the allocation. Thus, the patronage dividend paid to a member for the 2012 year, which was mailed in mid-March 2013, will

Under Taxpayer's Bylaws, and consistent with State A law, the

Taxpayer actively encourages members to use patronage dividend allocations before they expire, and most members do so. Over the past five years, approximately            of its patronage dividend allocations have been used to purchase merchandise or redeemed for cash or a check. In its annual patronage dividend notice Taxpayer reminds each member of any remaining unredeemed patronage dividend from the previous year and how the patronage dividend can be used before it expires. Thus, Taxpayer's recent patronage dividend notice sent in March 2013 informed each active member of his or her 2012 patronage dividend, how it was determined, and, if applicable, of the portion of his or her 2011 patronage dividend that had not yet been used.

In addition, when members visit Taxpayer's stores, they are generally asked whether they have unused patronage dividends that they would like to apply to their purchases. Store employees can access information regarding the unused balance of a member's patronage dividend on the Taxpayer computer system while the member is at the check-out counter, when members wish to apply their unused balance to the purchase price of merchandise.

As technology continues to advance in the retail marketplace, Taxpayer intends to include comparable functionality on its website and through mobile devices so that a member will be prompted to use his or her dividend balance when purchasing through those digital channels.

Taxpayer members purchase “personal, living, or family items” from Taxpayer. Since a member cannot claim a deduction for the cost of merchandise purchased for such purposes, the member does not realize income for federal income tax purposes when his or her nonqualified written notices of allocation related to such merchandise are used to purchase merchandise or are redeemed for cash or for a check. Section 1385(b)(2) of the Code provides, in part, that any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount is attributable to personal, living, or family items.

Taxpayer is a subchapter T cooperative, but it has several characteristics that distinguish it from most other subchapter T cooperatives. Taxpayer has over \_\_\_\_\_ active members. While some other cooperatives have \_\_\_\_\_ of \_\_\_\_\_ members, taxpayer is not aware of any that have \_\_\_\_\_. Taxpayer’s patronage dividends each year are paid entirely in the form of nonqualified written notices of allocation. Taxpayer actively encourages members to use patronage dividends to purchase merchandise. Members also have the option to request that their notices be redeemed for cash or check. Finally, Taxpayer is a consumer cooperative. Since members purchase “personal, living or family items” from Taxpayer, they do not realize income when their nonqualified notices of allocation are redeemed for property or money.

Taxpayer currently mails \_\_\_\_\_ of patronage dividend notices to members in March each year. This is expensive and consumes a tremendous amount of paper resources. The cost of mailing the 2012 patronage dividend (which was sent to over \_\_\_\_\_ members) was approximately \$ \_\_\_\_\_, and the amount of paper consumed was substantial.

For several years, Taxpayer has been exploring different options for communicating with members, with the goals of enhancing engagement with members, increasing efficiency and speed of delivery, and reducing cost and environmental impact. The process for notifying members of their patronage dividends is one of the key areas of focus. Taxpayer and many of its members believe that the current system, which is heavily dependent on the U.S. mail, is antiquated and also less effective today in meeting the goals identified above. Electronic means of communication offer more effective and efficient alternatives today and for the future.

Taxpayer has embraced the Internet as a more efficient and effective means of communicating with its members generally, and it would like to begin making better use of the Internet as part of its patronage dividend notification process. Taxpayer believes that the Internet can be as effective as the U.S. mail (if not more effective) in delivering patronage dividend notices to members, at a fraction of the cost, environmental impact and waste. Equally important, many members tell Taxpayer they would prefer to

receive their dividend notices in digital form, either through e-mail or another digitized format.

Taxpayer is interested in effectively and efficiently communicating patronage dividend information to members for several reasons. The payment of patronage dividends is one of the distinguishing features of the cooperative form of business, and Taxpayer wants to make certain that members are notified of the patronage dividends they earn. Taxpayer also strongly desires members to redeem their patronage dividends at Taxpayer stores (or Taxpayer's website) to purchase additional merchandise. Taxpayer would like to increase its members' usage rate, if possible, above the current high rate. This is an important aspect of Taxpayer's cooperative business model.

Taxpayer's fiscal year ends December 31. As noted earlier, each year, in January and February, Taxpayer goes through the process of closing its books and preparing its financial statements so that it can determine net earnings available for payment to members as patronage dividends. It then allocates the earnings among members on the basis of patronage.

This will not change. What will change is the process and method used to notify members of their patronage dividend allocations for the year.

Upon completion of its accounting, allocation and approval process, Taxpayer will do three things, which most likely will occur during March.

1. Post dividend information on an enhanced Taxpayer website. Taxpayer will, as it has done in the past, post patronage dividend information for the year on the portion of its website set aside for that purpose. Each member currently can readily access his or her dividend information by going to Taxpayer's website, clicking on "membership," clicking on "dividend" and entering his or her name and member number. When a member does this, the member is provided with the current balance of unused dividends. The information includes current and prior unused patronage dividends and any unused rebates under the Taxpayer program. Currently, these amounts are not distinguished.

Taxpayer anticipates enhancing the information available at the site so that a member will not only see a detailed breakout of his or her current patronage dividend and/or balance, but will also be provided information about the prior year patronage dividend and/or balance, if applicable, comparable to what the member now receives in the notice sent to him or her through the U.S. mail.

In addition, Taxpayer anticipates making appropriate enhancements to the website so it will be able to determine which members actually look up their dividend information at the website (the “Enhanced Website”).

2. E-mail notification. Taxpayer will also send an e-mail to members entitled to a patronage dividend for whom it has e-mail addresses. Taxpayer currently has e-mail addresses for approximately        of its active members.

The e-mail will contain the information currently included in the written notices of allocation being sent to members through the U.S. mail. Its subject matter line will highlight the fact that the e-mail contains the patronage dividend information for the year. The body of the e-mail will provide that a member can request that the information be mailed to him or her at no charge.

Taxpayer’s system will be able to identify members whose e-mails cannot be delivered, and a list of those members will be generated. Subsequent attempts may be made to send notices to those members by e-mail. If the notices still are returned as undelivered, the member will be sent a written notice of allocation through the U.S. mail. In essence, such members will be treated in the same manner as if Taxpayer had not sent them an e-mail, except that their notice will be mailed later (but before September 15).

For notices that are delivered, Taxpayer’s system will be able to track whether the e-mails are actually opened. The system will also be able to track instances where the message has been viewed without opening it and the viewer has clicked on one of the links in the message. For instance, the message may have links to portions of the Taxpayer website informing members how they can use patronage dividends to purchase merchandise.

Taxpayer’s systems as well as third-party e-mail provider systems will generate a list of members who have accessed the e-mail in either of these two ways.

3. Mailing to members for whom Taxpayer does not have an e-mail address or that request the dividend notification by mail. Finally, Taxpayer will, as it has done in the past, prepare a mailing to members entitled to a patronage dividend, but the March mailing will be limited to members for whom it does not have an e-mail address and members that request notification by mail. This mailing will include a paper nonqualified written notice of allocation informing the member of his or her patronage dividend for the year.

Taxpayer contemplates that one or more subsequent e-mail notices may be sent to members for whom it has e-mail addresses, reminding them of their allocations and encouraging them to use them. The e-mail notices may be targeted to all members, just to members who have not accessed their original e-mail notice (or whose original

notices could not be successfully delivered), just to members who have not used their allocations for the year to purchase merchandise, or to some other subset of members.

Taxpayer currently also provides patronage dividend information to members in another way. When a member visits a Taxpayer store and purchases merchandise, the store employee generally asks the member whether he or she has dividends to apply to the purchase. If a member does not know, the store employee can look it up and apply any balance to the purchase price. This is an important way of communicating patronage dividend information to members, and it will continue in the future.

Members who purchase merchandise on-line or by mail order are also encouraged to apply unused dividends to their purchases. The web checkout page that must be completed to place an order enables members to apply any unused dividends to the purchase price. In the future, as technology permits, Taxpayer intends to prompt members to use their dividends when they log into their member account when making an on-line purchase.

Finally, on or before September 15 each year, Taxpayer will conduct a clean-up mailing to all members who received an e-mail notice who have not either (i) accessed their patronage dividend information on the Enhanced Website, (ii) accessed the e-mail notice that was sent to them in March or any follow-up e-mail containing requisite patronage dividend allocation information, or (iii) actually used (by some predetermined cut-off date) the amounts allocated to them to purchase merchandise or to request and receive cash or a check. This mailing will include a written notice of allocation informing the member of his or her patronage dividend for the year.

The subsequent mailing will not be sent to members who have electronically accessed their dividend information as described above or who have used their patronage dividend for the year to purchase merchandise or requested to receive cash or a check. It is not necessary to send a written notice of allocation to such members since they either will have already been notified or will have already redeemed or been paid their patronage dividend for the year.

Through this procedure, those members who have not already used their patronage dividends by the predetermined cut-off date will have been provided a written notice of allocation in one of three ways: (i) by accessing the notice on the Enhanced Website, (ii) by accessing an e-mail notice sent to the member, or (iii) through the U.S. mail either in the March mailing or in a later mailing prior to September 15.

Taxpayer requests the following rulings relating to these changes:

1. When Taxpayer sends a member a nonqualified written notice of allocation of his or her patronage dividend for a year by e-mail prior to the close of the payment period for the year, the member will be regarded as having received a "nonqualified written notice of allocation for the year which was paid as a

patronage dividend during the payment period for the taxable year during which the patronage occurred” within the meaning of section 1382(b)(2) of the Code.

2. When a member accesses (as evidenced by Taxpayer’s website records) on Taxpayer’s Enhanced Website the nonqualified written notice of allocation of his or her patronage dividend for a year before the close of the payment period for the year, the member will be regarded as having received a “nonqualified written notice of allocation for the year which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred” within the meaning of section 1382(b)(2) of the Code.
3. When a nonqualified written notice of allocation paid as part of a patronage dividend as provided in rulings 1 and 2 is later used to purchase merchandise or otherwise redeemed for money or other property (except written notices of allocation), Taxpayer will be entitled to an exclusion or deduction as provided in section 1382(b)(2) of the Code or a tax benefit as computed under section 1383(a)(2).

Subchapter T cooperatives are permitted to exclude or deduct payments to patrons that qualify as “patronage dividends” as that term is defined in section 1388(a) of the Code, provided the payments are made in the form and manner and within the time period specified in subchapter T.

Patronage dividends must be paid during the payment period for a year. Under section 1382(d) of the Code, that payment period is a twenty and one-half month period beginning on the first day of a taxable year and ending eight and one-half months after year end.

Patronage dividends may be paid in cash, property, and written notices of allocation. Section 1388(b) of the code defines the term “written notice of allocation” as any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

Section 1.1388-1(b) of the Income Tax Regulations further provides that a mere credit to the account of a patron on the books of the organization without disclosure to the patron, is not a written notice of allocation. A written notice of allocation may disclose to the patron the amount of the allocation which constitutes a patronage dividend either as a dollar amount or as a percentage of the stated dollar amount of the written notice of allocation.

Section 1.1382-2(b) provides that a written notice of allocation is considered paid when it is issued to the patron.



Written notices of allocation may be either “qualified” or “nonqualified.” This characterization is important because it determines when a cooperative is entitled to exclude or deduct and a member is required to take into account for federal income tax purposes the portion of the patronage dividend paid in written notices of allocation.

Section 1388(c) of the Code defines “qualified written notice of allocation” include a notice that is redeemable for cash at its stated dollar amount for a period of at least 90 days from the time of payment. The term also includes a written notice of allocation that the recipient has consented to take into account for federal income tax purposes in the manner provided in section 1385(a).

Section 1388(d) of the Code defines a “nonqualified written notice of allocation” as a written notice of allocation which is not described in section 1388(c) or a qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid.

When a patronage dividend is paid in cash, property and a qualified written notice of allocation, a cooperative is entitled to exclude or deduct the payment pursuant to section 1382(b)(1) of the Code, and the recipient is required to take the payment into account for tax purposes in accordance with the rules contained in section 1385(a). Generally, taking a qualified notice into account under section 1385(a) means including the stated dollar amount of the notice in income in the year of receipt. There is, however, an exception for members of consumer cooperatives.

When a patronage dividend is paid in a nonqualified written notice of allocation, a cooperative is not entitled to an exclusion or deduction when the patronage dividend is paid. Rather, sections 1382(b)(2) and 1383 of the Code provide for a deduction when the nonqualified written notice of allocation is later redeemed for money or other property (except written notices of allocation).

When a member receives a nonqualified written notice of allocation from a cooperative, he or she is not required to include anything in income for federal income tax purposes. Rather, the member generally is required to include an amount in income when the nonqualified written notice of allocation is later redeemed for money or other property (except written notices of allocation). However, here, as well, there is an exception for members of consumer cooperatives.

A member of a consumer cooperative is not required to include a patronage dividend in income so long as the patronage dividend relates to purchases of “personal, living or family items.” This exception also applies to proceeds from the redemption, sale or other disposition of a nonqualified written notice of allocation that was originally received as part of a patronage dividend arising from purchases of “personal, living or family items.” Section 1385(b)(2) provides of the Code provides that the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage

dividend, shall not be included in gross income to the extent that such amount is attributable to personal, living, or family items.

Section 1.1385-1(c)(1)(i) provides, in part, that gross income shall not include any amount of a patronage dividend described in § 1.1385-1(a)(1) which is received with respect to the purchase of supplies, equipment, or services, which were not used in the trade or business and the cost of which was not deductible under section 212.

Section 1.1385-1(c)(1)(ii) provides, in part, that any amount (to the extent treated as ordinary income § 1.1385-1(b)) received on the redemption, sale or other disposition of a nonqualified written notice of allocation which was received as a patronage dividend with respect to the purchase of supplies, equipment, or services, which were not used in the trade or business and the cost of which was not deductible under section 212.

Because of this exception, consumer cooperatives may be granted an exemption under section 6044(c) and § 1.6044-4 from the Form 1099-PATR reporting requirements that would otherwise apply.

Taxpayer is a consumer cooperative subject to the provisions of subchapter T of the Code. Taxpayer represents that it pays patronage dividends each year entirely in nonqualified written notices of allocation. As a consequence, Taxpayer does not claim an exclusion or deduction under section 1382(b)(1) of the Code when it pays its patronage dividends. Rather, Taxpayer claims a deduction when the nonqualified notices are used by members to purchase merchandise or are redeemed for cash under sections 1382(b)(2) and 1383.

Members of cooperatives (including those of Taxpayer) are not, in general, required to include nonqualified written notices of allocation in income when received. Because the products and services that Taxpayer provides members are “personal, living or family” items, Taxpayer’s members are also not required to include anything in income when nonqualified notices are later redeemed under section 1385(b)(2) of the Code. Because of this, Taxpayer has been granted exemption under section 6044(c) from the Form 1099-PATR reporting requirements.

The focus of these rulings is on proposed changes to the manner in which Taxpayer notifies members of their patronage dividends. Historically, Taxpayer has mailed patronage dividends to members in February or March each year. As described in its request, Taxpayer would like to begin using electronic media as the principal means of delivery of patronage dividends to members, using the mail as a back-stop.

Taxpayer currently excludes or deducts amounts paid in redemption of the nonqualified written notices of allocation used to pay patronage dividends pursuant to sections 1382(b)(2) and 1383 of the Code. Taxpayer’s proposed change presents three tax issues. First, will notices provided to members electronically constitute “written”

notices of allocation within the meaning of sections 1382(b)(2) and 1388(b)? Second, when nonqualified written notices of allocation are transmitted by e-mail during the payment period, will they be deemed to have been “paid as a patronage dividend during the payment period for the taxable year”? Third, when a member visits Taxpayer’s Enhanced Website and accesses his or her patronage dividend information, will the member be regarded as having been paid his or her patronage dividend in a nonqualified written notice of allocation at that time?

Regarding the first issue, transmitting written notices of allocation electronically does not change their status as “written.” The Code and regulations do not contain a definition of the word “written” as used in the phrase “written notice of allocation.” There is no guidance under subchapter T interpreting the word “written.”

Generally, the term “written” is used to distinguish communications that are made in writing from those that are made orally, by sign language, through pictures, etc. For example, Black’s Law Dictionary (Ninth Edition) defines “writing” as:

“Any intentional recording of words that may be viewed or heard with or without mechanical aids. This includes hard-copy documents, electronic documents on computer media, audio and videotapes, e-mails, and any other media on which words can be recorded.”

While there is no authority interpreting the term “written” as used in subchapter T, there is considerable authority interpreting that word elsewhere in the Code. That authority makes it clear that, when a written notice is transmitted by e-mail or some other form of electronic communication, the notice does not lose its character as a “written” notice. See e.g., the Circular 230 regulations provide specific rules related to the provision of written advice by practitioners. The rules apply to any written advice, including advice provided by means of electronic communication; and tax-exempt organizations are required to provide certain information to the public, and to provide copies of certain documents, such as an annual report, to any member of the public submitting a written request for the document. Section 301.6401(d)-1(d)(2) provides that requests in writing must be honored if “addressed to, and delivered by mail, electronic mail, facsimile, or a private delivery service” to any office of the tax-exempt organization.

While subchapter T of the Code describes what must be contained in a written notice of allocation, it does not specify any particular means for transmitting a written notice of allocation to a member. Cooperatives historically have employed a variety of delivery methods. Some bring members’ patronage dividends (including any written notices of allocation) to the annual meeting and let members pick them up. Patronage dividends that are not picked up are then mailed (or otherwise delivered) to members. Others have fieldmen make personal visits to hand deliver patronage dividends to members. The most common means employed to transmit patronage dividends is the

U.S. mail. At one time, some cooperatives sent patronage dividends “special delivery.” Today, some cooperatives use messenger systems such as Federal Express or UPS.

Nothing in the Code or regulations precludes delivery of written notices of allocation electronically. We agree with Taxpayer that this approach should be followed in interpreting the language of subchapter T of the Code.

The first ruling requested relates to nonqualified written notices of allocation that are e-mailed to members. Specifically, when Taxpayer sends a member a nonqualified written notice of allocation of his or her patronage dividend for a year by e-mail prior to the close of the payment period for the year, the member will be regarded as having received a “nonqualified written notice of allocation for the year which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred” within the meaning of section 1382(b)(2) of the Code.

Subchapter T allows cooperatives to exclude or deduct patronage dividends (including qualified written notices of allocation) “paid during the payment period for the taxable year” and amounts paid to redeem nonqualified written notices of allocation that were “paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred” under section 1382(b)(2) of the Code. Section 1.1382-2(b) provides that a written notice of allocation is considered paid when it is issued to the patron. The same language is found in § 1.1382-3(c)(1), which applies to written notices of allocation issued by section 521 cooperatives as part of distributions of nonpatronage income on a patronage basis.

While the subchapter T regulations provide an “issuance is payment” rule for written notices of allocation, they also include the “mailing is payment” rule for dividends paid on capital stock by section 521 cooperatives. Section 1.1382-3(b) provides, in part, that if a dividend is paid by check and the check bearing a date within the taxable year is deposited in the mail, in a cover properly stamped and addressed to the shareholder at his last known address, at such time that in the ordinary handling of the mails the check would be received by such holder within the taxable year, a presumption arises that the dividend was paid to such holder in such year.

The language requires not only that the notices be “issued,” but also that they be issued “to the patron.” Thus, simply recording the obligation on the books of a cooperative is not enough. In fact, § 1.1388-1(b) provides that a mere credit to the account of a patron on the books of the organization without disclosure to the patron, is not a written notice of allocation. Entry on the books and some form of transmission is required. However, subchapter T does not make payment contingent upon receipt of a written notice of allocation by a patron.

Issuance to a patron is all that is required. If payment were tied to actual receipt by a patron, then it would not be possible as a practical matter for either the Service or

cooperatives to know for certain when patronage dividends paid in written notices of allocation were actually considered paid.

For these reasons, Taxpayer should be regarded as having paid its patronage dividend in nonqualified written notices of allocation at the time the nonqualified written notices of allocation are recorded on its books and records and transmitted by e-mail to members since that is the time the notices are issued to the patrons. Taxpayer asks that we confirm that conclusion by issuing the first requested ruling.

The second ruling Taxpayer is requesting relates to members who access their patronage dividend information on Taxpayer's Enhanced Website. When a member accesses (as evidenced by Taxpayer's website records) on Taxpayer's Enhanced Website the nonqualified written notice of allocation of his or her patronage dividend for a year before the close of the payment period for the year, the member will be regarded as having received a "nonqualified written notice of allocation for the year which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred" within the meaning of section 1382(b)(2) of the Code.

According to Taxpayer, some cooperatives pay their patronage dividends by passing them out to members that attend their annual meeting and then mailing any that were not picked up. When members pick up their patronage dividend, the patronage dividend and any written notices of allocation that are part of that patronage dividend have been paid.

Making patronage dividend information available on a website like Taxpayer's Enhanced Website is directly analogous. A member who takes advantage of this alternative will visit the Enhanced Website and pick-up his or her nonqualified written notice of allocation by accessing it on the Enhanced Website. It should not be necessary to also mail the member a copy of the nonqualified written notice of allocation. Taxpayer asks that we confirm that conclusion by issuing the second requested ruling.

The third requested ruling involves when a nonqualified written notice of allocation paid as part of a patronage dividend as provided in rulings 1 and 2 is later used to purchase merchandise or otherwise redeemed for money or other property (except written notices of allocation), Taxpayer will be entitled to an exclusion or deduction as provided in section 1382(b)(2) of the Code or a tax benefit as computed under section 1383(a)(2). We agree with Taxpayer that this ruling follows from the holdings of the first two rulings because the Taxpayer's member has redeemed all or part of his or her patronage dividend.

Lastly, we note that the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107-147 (March 9, 2002), permits the electronic furnishing of any statement required under subpart B of part III of subchapter A of chapter 61 of Title 26 (sections 6041 through 6050W). Section 401 of JCWAA specifically eliminated the in-

person-delivery and first-class-mailing requirements that prevented electronic furnishing of statements under sections 6042(c), 6044(e), and 6049(c)(2). Section 401 of JCWAA also permits the electronic furnishing of all statements required under sections 6041 through 6050W, if the recipient consents to receive the statement in a manner similar to the one permitted by regulations under section 6051 or in such other manner as provided by the Secretary.

Taxpayer is a consumer cooperative and its patronage dividends are exempt from the Form 1099-PATR reporting requirements, and are not governed by the affirmative consent requirements set forth in section 401 of JCWAA. Moreover, because Taxpayer's patronage dividends are not taken into income by its members, the overriding rationale for requiring affirmative consent for electronic delivery of information statements, that is, to ensure that taxpayers are able to receive the information that they need to report in income in light of the digital divide, fades in importance.

Consequently, although we believe it is always good practice to require affirmative consent when electronically delivering statements to recipients, we don't believe it is legally impermissible to allow electronic delivery of the nonqualified written notice of allocation under section 1388(d) of the Code of the member's patronage dividend without prior affirmative consent to such electronic delivery.

Accordingly, based solely on the preceding facts, law, and analysis we rule that:

1. When Taxpayer sends a member a nonqualified written notice of allocation of his or her patronage dividend for a year by e-mail prior to the close of the payment period for the year, the member will be regarded as having received a "nonqualified written notice of allocation for the year which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred" within the meaning of section 1382(b)(2) of the Code.
2. When a member accesses (as evidenced by Taxpayer's website records) on Taxpayer's Enhanced Website the nonqualified written notice of allocation of his or her patronage dividend for a year before the close of the payment period for the year, the member will be regarded as having received a "nonqualified written notice of allocation for the year which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred" within the meaning of section 1382(b)(2) of the Code.
3. When a nonqualified written notice of allocation is paid as part of a patronage dividend as provided in rulings 1 and 2 is later used to purchase merchandise or otherwise redeemed for money or other property (except written notices of allocation), Taxpayer will be entitled to an exclusion or deduction as provided in section 1382(b)(2) of the Code or a tax benefit as computed under section 1383(a)(2).

No opinion is expressed or implied regarding the application of any other provision in the Code or regulations.

This ruling is directed only to the taxpayer that requested it. Under section 6110(k)(3) of the Code it may not be used or cited as precedent. In accordance with a power of attorney filed with the request, a copy of the ruling is being sent to your authorized representative.

Sincerely yours,

Paul F. Handleman

Paul F. Handleman

Chief, Branch 5

Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)